

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

TYRONE HAYES PITTS,

Plaintiff,

v.

No. CV 20-1205 CG

KILOLO KIJAKAZI,¹
Commissioner of the
Social Security Administration,

Defendant.

**ORDER GRANTING UNOPPOSED MOTION TO AWARD ATTORNEY FEES
UNDER THE EQUAL ACCESS TO JUSTICE ACT**

THIS MATTER is before the Court on the Plaintiff Tyrone Hayes Pitts *Unopposed Motion for Attorney Fees Pursuant to the Equal Access to Justice Act (EAJA)* (the “Motion”), (Doc. 30), filed January 25, 2022. In the Motion, Mr. Pitts, by his attorney Feliz M. Martone, Esq., indicates that Mr. Pitts seeks attorney fees in the amount of \$3,371.00. *Id.* at 1. Further, the parties agree that “[p]ayment of this amount shall constitute a complete release from and bar to any and all claims Plaintiff may have in connection with this action,” and that “if Plaintiff’s counsel ultimately receives an award of attorney fees pursuant to 42 U.S.C. § 406(b), she must refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).” *Id.* The Court, having reviewed the Motion under EAJA, 28 U.S.C. § 2412, and noting that the Motion is unopposed, finds the Motion is well-taken and shall be granted.

IT IS THEREFORE ORDERED that Mr. Pitts be awarded \$3,371.00 in attorney fees pursuant to EAJA, 28 U.S.C. § 2412, made payable to Mr. Pitts but mailed to Mr.

¹ Kilolo Kijakazi was appointed Acting Commissioner of the Social Security Administration on July 9, 2021.

Pitts' attorney. See *Astrue v. Ratliff*, 560 U.S. 586 (2010) (EAJA fees are paid to the prevailing party, not the attorney).

IT IS FURTHER ORDERED that if Mr. Pitts' attorney receives attorney fees under both the EAJA and 42 U.S.C. § 406(b) of the Social Security Act, Mr. Pitts' attorney shall refund the smaller award to Mr. Pitts pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Carmen E. Garza', with a long horizontal line extending to the right.

THE HONORABLE CARMEN E. GARZA
CHIEF UNITED STATES MAGISTRATE JUDGE